

Bennion, Richard

From: Stephen Bennett [sbennett@letwakbennett.com]
Sent: Friday, January 21, 2011 9:22 AM
To: Bennion, Richard; Lambert, Robert (Attorney); Moon, Richard
Subject: Addendum to Bennett Petition 462.160

Dear Rick et. al.

Please post the following addendum to the BOE website and distribute same to the board members. Thanks in advance. Steve

After the first full paragraph on page 16 beginning "More case law stands for the same proposition....", please insert the following:

3. More Citation to Cases Where Courts Have Determined When a Remainderman's Interest in Trust Property Legally Vests

a. Cases Where Courts Found Interests of Remaindermen Did Not Vest Upon Creation of a Trust, but Vested Later upon Termination of a Life Estate

Bucquet v. Livingston (1976) 57 Cal. App. 3d 914 [due to attorney drafting error, life estate holder was erroneously given a general power appointment which subjected interests of remaindermen to tax when holder died]; *California First Bank v Townsend* (1981) 124 Cal. App. 3d 922 [holder of life estate interest in two trusts held general power of appointment in the first, a limited power in the second; when holder died inheritance taxes were assessable on the former but not the latter]. *Reilly v. City and County of San Francisco* (2006) 142 Cal. App. 4th 480, 493 [remainderman's interest did not vest until life estate holder died without bearing children]; *Phelps v. Orange County Assessment Appeals Bd. No. 1* (2010) 187 Cal. App. 4th 653 [life estate holder had use of the trust property, including improvements, which he transferred to his children upon his death] *Estate of Nunn* (1974) 10 Cal. 3d 799, 809 [remaindermen's interests remain unvested when subject to a broad power of life estate holder to invade principal]; *Estate of Rosecrans* (1971) 4 Cal. 3d 34, 92 [California Supreme Court found that a life estate holder, who also possesses an unlimited right to invade corpus, may hold the equivalent of a general power of appointment]; *Cory v. Ward* (1980) 106 Cal. App. 3d 631, 639 [where trust instrument clearly created a life estate and provided the holder a general power of appointment, extrinsic testimony to the contrary was inadmissible].

b. Cases Where Courts Found Interests of Remaindermen Vested When the Trust was Created, Not Upon Later Termination of a Life Estate

In re Stanford's Estate (1957) 49 Cal. 2d 120, 124-125 and *Ammco Ornamental Iron, Inc. v Wing* (1994) 26 Cal. App. 409, 418 remaindermen's interests vested the day the trust was created, not when the life estate holder later died]; *In re Estate of Murphy* (1920) 182 Cal. 740, 743 [remainder interests are vested even though defeasible]; *Estate of Stober* (1980) 108 Cal. App. 3d 591, 600 [California could not assess inheritance tax on assets distributed to vested remaindermen upon death of life estate holder who held only a special power of appointment]; *Jewett v. C.I.R.* 455 U.S. 305 [US Supreme Court found that a donee's interest in donated property vests for tax purposes when the donor relinquishes ownership of property, not at a later time when the donee's interest becomes possessory].